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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JUSTIN GAWRONSKI and A. BRUGUIER,
9 individually and on behalf of all others
10 similarly situated,

11 Plaintiffs,

12 vs.

13 AMAZON.COM, INC., a Delaware
14 corporation, and AMAZON DIGITAL
15 SERVICES, INC., a Delaware corporation,

16 Defendants.

Case No.

COMPLAINT — CLASS ACTION

JURY TRIAL DEMANDED

17 Plaintiffs, by their attorneys, upon personal knowledge as to themselves and their own
18 acts and upon information and belief as to all other matters, allege as follows:

19 **NATURE OF THE ACTION**

20 1. Plaintiffs Justin D. Gawronski and Antoine J. Bruguier bring this class action
21 complaint against defendants Amazon.com, Inc. and Amazon Digital Services, Inc., both
22 headquartered in Seattle, Washington, (collectively “Amazon”) for their wrongful practice of
23 remotely deleting digital content from their customers’ Amazon Kindle electronic book (“e-
24 book”) reading devices and Kindle for iPhone applications.

2. With an uncanny knack for irony, Amazon recently remotely deleted any traces of certain electronic copies of George Orwell's "1984" and "Animal Farm" from customers' Kindles and iPhones, thereby sending these books down Orwell's so-called "memory hole."

3. As stated by Farhad Manjoo of slate.com in response to Amazon's Big Brother-like behavior, "The power to delete your books, movies, and music remotely is a power no one should have. . . . [T]he company ought to remove the technical capability to do so, making such a mass evisceration impossible in the event that a government compels it."

4. And consider noted *New York Times* technology writer, David Pogue's description of Amazon's conduct: "[I]t's like Barnes & Noble sneaking into our homes in the middle of the night, taking some books that we've been reading off our nightstands, and leaving us a check on the coffee table."

PARTIES

5. Plaintiff Justin D. Gawronski is a resident of Michigan.

6. Plaintiff Antoine J. Bruguier is a resident of California.

7. Defendant Amazon.com, Inc. is a leading online retailer of consumer goods throughout the world. Amazon.com, Inc. is a Delaware corporation headquartered in King County, Washington at 1200 12th Avenue, Seattle, Washington 98144. Amazon.com, Inc. does business throughout the State of Washington and the nation.

8. Defendant Amazon Digital Services, Inc. is a part of the Amazon.com family of companies and is the seller and distributor of the Amazon Kindle device. Amazon Digital Services, Inc. is a Delaware corporation headquartered in King County, Washington at 605 5th Ave. South, Seattle, Washington, 98104. Amazon Digital Services, Inc. does business throughout the State of Washington and the nation.

1 **JURISDICTION AND VENUE**

2 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
3 U.S.C. § 1331.

4 10. Personal jurisdiction and venue are proper because Amazon is a corporation
5 headquartered in King County and/or because the improper conduct alleged in this Complaint
6 occurred in, was directed from, and/or emanated or exported from Washington.

7 **FACTUAL BACKGROUND**

8 11. Amazon sells and/or sold wireless reading devices called “Kindle,” “Kindle 2,”
9 and “Kindle DX” (“Kindles”) that allow consumers to read digital content, including electronic
10 books. Amazon also distributes the iPhone and iPod Touch application called “Kindle for
11 iPhone.”

12 12. Amazon also operates an online e-book store (the “Kindle Store”)
13 (www.amazon.com/kindlestore) accessible from any computer and directly from Kindles and
14 iPhones that allows consumers to purchase and download e-books directly to their Kindles and
15 iPhones.

16 13. Kindles include the ability to purchase digital content over the internet directly
17 from the Kindle Store wirelessly by accessing a cellular radio network it calls “Whispernet.”
18 This means that consumers can engage in interstate commerce from Kindles by purchasing
19 digital content anywhere in the United States that Whispernet covers. Kindle for iPhone users
20 may also purchase and download digital content wirelessly.

21 14. Kindles include the ability for users to bookmark and highlight content, as well as
22 add annotations to the text of e-books, just like writing in the margins of a paper book.

23 15. The “License Agreement and Terms of Use” for the Amazon Kindle states:
24

3. Digital Content

Use of Digital Content. Upon your payment of the applicable fees set by Amazon, Amazon grants you the non-exclusive right to keep a permanent copy of the applicable Digital Content and to view, use, and display such Digital Content an unlimited number of times, solely on the Device or as authorized by Amazon as part of the Service and solely for your personal, non-commercial use. Digital Content will be deemed licensed to you by Amazon under this Agreement unless otherwise expressly provided by Amazon.

16. On or about July 16 and 17, 2009, Amazon withdrew from sale certain e-books, including George Orwell's "1984" and "Animal Farm." Amazon then remotely deleted these e-books from purchasers' Kindles and iPhones. In doing so, Amazon not only deleted the e-books, but also rendered useless any electronic notes and annotations that consumers had made within these e-books because the notes were no longer tied to the referenced or highlighted text. Amazon then refunded the purchase price to these consumers.

17. This is apparently not the first time that Amazon has remotely deleted content from Kindles and iPhones. Earlier in 2009, Amazon reportedly remotely deleted certain copies of "Harry Potter" books by J.K. Rowling and certain copies of books by Ayn Rand.

18. Amazon never disclosed to Plaintiffs or the Classes that it possessed the technological ability or right to remotely delete digital content purchased through the Kindle Store from Kindles or iPhones. Neither this capability nor this apparent right are disclosed in the Terms of Use. Similarly, Amazon never disclosed that it could remotely render useless notes, annotations, bookmarks, and highlighting created by consumers.

19. It is reasonable for consumers to rely on the information contained in the product or service's terms of use when making the decision whether or not to purchase an item. In fact, Amazon intends for consumers to rely on such information when making their decisions about purchases.

1 20. The capability for Amazon to remotely delete purchased items is material in a
2 consumer's decision to buy Kindles or e-books through the Kindle Store.

3 21. The value of Kindles and reading materials purchased through the Kindle Store
4 are significantly diminished by Amazon's ability to remotely delete digital content, including e-
5 books, magazines, and newspapers. First, an electronic reading device that allows content to be
6 deleted remotely is worth less than one without such a feature. Second, there exists a significant
7 secondary market for used electronic reading devices, including Kindles, and Plaintiffs' Kindles
8 are worth less on this market due to Amazon's ability to remotely delete digital content from it.
9 Plaintiffs and members of the Class have been injured by this diminution in value.

10 22. As of July 30, 2009, the price for the Kindle Edition of "1984" is \$9.99 and the
11 price for the Kindle Edition of "Animal Farm" is \$6.99.

12 23. Amazon has reaped and retained benefits from these fraudulent and misleading
13 sales.

14 24. Amazon has financially benefitted from this practice.

15 **FACTS RELATING TO PLAINTIFF GAWRONSKI**

16 25. On or about early-June, 2009, Mr. Gawronski purchased for \$0.99 an electronic
17 copy of George Orwell's "1984" for use on his Kindle 2 from Amazon's Kindle Store. He
18 purchased the book because it was assigned to him as a summer homework assignment by a
19 teacher at his high school.

20 26. On or about July 20, 2009, after reading online about Amazon's practice of
21 remotely deleting copies of "1984" from Kindles, Mr. Gawronski powered on his Kindle 2 only
22 to watch "1984" vanish before his very eyes. Because "1984" was the most recent book he had
23 been reading on his Kindle 2 prior to July 20, 2009, the Kindle 2 powered on to the last page of
24

1 “1984” Mr. Gawronski had been reading. Within moments of powering on his Kindle 2 to this
2 page of “1984,” the entire e-book disappeared as Amazon immediately remotely deleted it from
3 his Kindle 2.

4 27. Mr. Gawronksi did not consent to Amazon remotely deleting “1984” from his
5 Kindle 2.

6 28. As part of his studies of “1984,” Mr. Gawronski had made copious notes in the
7 book. After Amazon remotely deleted “1984,” those notes were rendered useless because they
8 no longer referenced the relevant parts of the book. The notes are still accessible on the Kindle 2
9 device in a file separate from the deleted book, but are of no value. For example, a note such as
10 “remember this paragraph for your thesis” is useless if it does not actually a reference a specific
11 paragraph. By deleting “1984” from Mr. Gawronski’s Kindle 2, this is the position in which
12 Amazon left him. Mr. Gawronski now needs to recreate all of his studies.

13 **FACTS RELATING TO PLAINTIFF BRUGUIER**

14 29. On April 25, 2009, Mr. Bruguier purchased for \$3.20 an electronic copy of
15 George Orwell’s “1984” for use on his Kindle from Amazon’s Kindle Store.

16 30. On Thursday, July 16, 2009 at 3:17 p.m., Mr. Bruguier received an email from
17 Amazon.com stating that it was “writing to confirm that we have processed your refund for
18 \$3.20” for his April 25, 2009 purchase of “1984.” This email did not state that Amazon initiated
19 the refund on its own without a request from Mr. Bruguier.

20 31. Later that day, at 11:44 p.m., Mr. Bruguier received another email, this time from
21 Amazon.com Customer Service. This email explained that:

1 We recently discovered a problem with a Kindle book that you have purchased.

2 Therefore, to remedy this situation, we have processed a refund to the payment
3 method used to purchase “NINETEEN EIGHTY-FOUR (1984).” Upon the
4 activation of the wireless, the title “NINETEEN EIGHTY-FOUR 1984)” will be
automatically removed from the device.

5 32. Mr. Bruguier did not consent to Amazon deleting his purchased copy of “1984.”

6 33. On or about July 17, 2009, Mr. Bruguier contacted Amazon.com with the
7 statement: “I would like to keep the title 1984. I like this book.” On July 17, 2009 at 1:28 p.m.,
8 he received an email response to his comment from Amazon.com Customer Service, which
9 stated in relevant part: “I understand that you’re upset, and I regret that we haven’t been able to
10 address your concerns to your satisfaction. Unfortunately, we won’t be able to offer any
11 additional insight or action on these matters.” In other words, Amazon intended to conceal the
12 true purpose for remotely deleting Mr. Bruguier’s purchased copy of “1984.”

13 34. Amazon later changed course and notified Mr. Bruguier by email on July 17,
14 2009 at 10:37 p.m. that it did not have the rights to sell the book.

15 35. On or about July 18, 2009, Mr. Bruguier again contacted Amazon to express his
16 displeasure and request that Amazon provide him with a replacement copy of “1984.” He stated,
17 in relevant part, that he was “especially annoyed by your deceit during the process; You
18 masqueraded the thing as a technical glitch and hid the fact that it was going to be removed.” He
19 went on to state, “In addition, I thought that once purchased, the books were mine. . . . So would
20 it be possible for you to give me another edition of 1984, one that you have the rights to
21 distribute?” In this correspondence with Amazon, Mr. Bruguier also quoted the Kindle’s Terms
22 of Use section on “Use of Digital Content”—the same section quoted above in paragraph 18.

36. Amazon responded to Mr. Bruguier's complaint at 9:25 a.m. on July 18, 2009 via email with a form letter that failed to address Mr. Bruguier's specific concerns.

CLASS ALLEGATIONS

37. Plaintiffs Gawronski and Bruguier bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of themselves and two classes, the Kindle Class and the Big Brother Class. Plaintiff Gawronski brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of himself and one subclass, the Big Brother Work-Product SubClass:

a) **The Kindle Class.** All individuals and entities in the United States who own or have owned an Amazon Kindle, Kindle 2, or Kindle DX.

b) **The Big Brother Class.** All individuals and entities in the United States who purchased any digital content through the Kindle Store that was subsequently remotely deleted by Amazon without the consent of the purchasers.

c) **The Big Brother Work-Product Subclass.** All individuals and entities in the United States who purchased any digital content through the Kindle Store that was subsequently remotely deleted by Amazon without the consent of the purchasers in which they made notes, annotations, highlights, or dog-ears.

Excluded from each Class and Subclass are Defendants, their legal representatives, assigns, and successors, and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and the judge's immediate family.

38. The Classes consist of thousands of individuals and other entities, making joinder impractical.

1 39. The claims of plaintiffs Gawronski and Bruguier are typical of the claims of all of
2 the other members of both Classes. The claims of Gawronski are typical of the claims of all of
3 the other members of the Subclass.

4 40. Plaintiffs will fairly and adequately represent and protect the interests of the other
5 members of the Classes and Subclass. Plaintiffs have retained counsel with substantial
6 experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are
7 committed to vigorously prosecuting this action on behalf of the members of the Classes and
8 Subclass, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any
9 interest adverse to those of the other members of the Classes.

10 41. Absent a class action, most members of the Classes and Subclass would find the
11 cost of litigating their claims to be prohibitive and will have no effective remedy. The class
12 treatment of common questions of law and fact is also superior to multiple individual actions or
13 piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes
14 consistency and efficiency of adjudication.

15 42. Amazon has acted and failed to act on grounds generally applicable to Plaintiffs
16 and the other members of the Classes and Subclass, requiring the Court's imposition of uniform
17 relief to ensure compatible standards of conduct toward the members of the Classes and
18 Subclass.

19 43. The factual and legal bases of Amazon's liability to Plaintiffs and to the other
20 members of the Classes and Subclass are the same, resulting in injury to Plaintiffs and all of the
21 other members of the Classes and Subclass. Plaintiffs and the other members of the Classes and
22 Subclass have all suffered harm and damages as a result of Amazon's wrongful conduct.

1 issuance of a declaratory judgment. Plaintiffs desire a judicial determination of their respective
2 rights and duties, and a declaration that Amazon, by remotely deleting Plaintiffs' electronic
3 copies of "1984," violated its own Terms of Use as to Plaintiffs and all Kindle users.

4 49. Plaintiffs seek a declaratory judgment under Fed. R. Civ. P. 57 and 28
5 U.S.C. § 2201 that Amazon's remote deletion of digital content from Kindles and the Kindle for
6 iPhone application violates its own Terms of Use, that Amazon lacks the right to remotely delete
7 any digital content from Kindles and the Kindle for iPhone application, and that Plaintiffs and
8 members of the Classes and Subclass have the right to keep a permanent copy of their purchases
9 and created digital content.

10 **SECOND CAUSE OF ACTION**

11 **Violation of 18 U.S.C. § 1030, the Computer Fraud and Abuse Act ("CFAA")** 12 **(on behalf of Plaintiffs, the Big Brother Class and the Big Brother Work-Product Subclass)**

13 50. Plaintiffs incorporate by reference the foregoing allegations.

14 51. Amazon violated 18 U.S.C. § 1030(a)(5)(A)(i) by knowingly causing the
15 transmission of a command to delete content to Plaintiffs' Kindles, which are protected
16 computers as defined in 18 U.S.C. § 1030(e)(2)(B) because they are used in interstate commerce
17 and/or communication. By deleting content from Plaintiffs' Kindles by way of remote deletion,
18 Amazon intentionally caused damage without authorization to Plaintiffs' Kindles.

19 52. Amazon violated 18 U.S.C. § 1030(a)(5)(A)(iii) by intentionally accessing
20 Plaintiffs' Kindles, protected computers, without authorization, and as a result, caused damage to
21 Plaintiffs' Kindles by remotely deleting content stored on them.

22 53. Plaintiffs and Big Brother Class members suffered damages even though Amazon
23 refunded the cost of the purchased content to Plaintiff and Big Brother Class members because:
24

1) they now have to replace the deleted content at a higher cost; and, 2) their Kindles were reduced in value by way of the deletion in that an electronic reading device that enables Amazon to remotely delete content is less valuable than one not subject to unconsented remote deletions of content.

54. Plaintiff Gawronski and the Big Brother Work-Product Subclass suffered damages because they created content on their Kindles within the purchased content that Amazon deleted. The remote deletions rendered their work-product useless and worthless because their work-product necessarily was linked to the deleted purchased content. As a result, Plaintiff Gawronski and the Big Brother Work-Product Subclass must expend further resources and effort in order to recreate their now useless work-product.

55. As a result of these takings, Amazon's conduct has caused a loss to one or more persons during any one-year period aggregating at least \$5,000 in value in real economic damages.

56. Plaintiffs have additionally suffered loss by reason of these violations, including, without limitation, violation of the right of privacy.

57. Amazon's unlawful access to Plaintiffs' Kindles and digital content has also caused Plaintiffs irreparable injury. Unless restrained and enjoined, Amazon will continue to commit such acts. Plaintiffs' remedy at law is not adequate to compensate it for these inflicted and threatened injuries, entitling Plaintiff to remedies including injunctive relief as provided by § 1030(g).

1 **THIRD CAUSE OF ACTION**

2 **Trespass to Chattels**

3 **(on behalf of Plaintiffs, the Big Brother Class and the Big Brother Work-Product Subclass)**

4 58. Plaintiffs incorporate by reference the foregoing allegations.

5 59. Amazon intentionally dispossessed and/or deprived Plaintiffs and members of the
6 Big Brother Class and Big Brother Work-Product Subclass of digital content they rightfully
7 possessed by remotely deleting said digital content.

8 60. Plaintiffs and members of the Big Brother Class and Big Brother Work-Product
9 Subclass did not consent to Amazon dispossessing them and/or depriving them of their digital
10 content by way of remote deletion.

11 61. Amazon did not have legal authority to seize or take dominion over Plaintiffs or
12 members of the Big Brother Class or Big Brother Work-Product Subclass's digital content.
13 Amazon has no more right to delete e-books from consumers Kindles and iPhones than it does to
14 retrieve from its customers' homes paper books it sells and ships to consumers.

15 62. As a result, Plaintiffs and members of the Big Brother Class and Big Brother
16 Work-Product Subclass suffered actual harm because they are now forced to find alternate means
17 to acquire the same content, such as buying paper copies of the content or paying a different
18 price through the Kindle Store for different editions of the same content, at higher costs.

19 **FOURTH CAUSE OF ACTION**

20 **Conversion**

21 **(on behalf of Plaintiffs, the Big Brother Class and the Big Brother Work-Product Subclass)**

22 63. Plaintiffs incorporate by reference the foregoing allegations.
23
24

1 64. Plaintiffs allege this cause of action in addition to and/or alternatively to their
2 Trespass to Chattels cause of action.

3 65. Amazon intentionally dispossessed Plaintiffs and members of the Big Brother
4 Class and Big Brother Work-Product Subclass of digital content they rightfully possessed by
5 remotely deleting said digital content.

6 66. Plaintiffs and members of the Big Brother Class and Big Brother Work-Product
7 Subclass did not consent to Amazon dispossessing them of their digital content by way of remote
8 deletion.

9 67. Amazon did not have legal authority to seize or take dominion over Plaintiff or
10 members of the Big Brother Class or Big Brother Work-Product Subclass's digital content.

11 68. As a result, Plaintiffs and members of the Big Brother Class and Big Brother
12 Work-Product Subclass suffered actual harm because they are now forced to find alternate means
13 to acquire the same content, such as buying paper copies of the content or paying a different
14 price through the Kindle Store for different editions of the same content, at higher costs.

FIFTH CAUSE OF ACTION

Breach of Contract

(on behalf of Plaintiffs and all Classes)

18 69. Plaintiffs incorporate by reference the foregoing allegations.

19 70. Plaintiffs and members of all Classes entered into identical agreements with
20 Amazon whereby Plaintiffs agreed to pay a certain sum of money in exchange for the "non-
21 exclusive right to keep a permanent copy of the applicable Digital Content and to view, use, and
22 display such Digital Content an unlimited number of times."

Kindle Store customers would receive the right to keep a permanent copy of their digital content and to be able to view said content an unlimited number of times.

80. Amazon's unfair or deceptive business acts and practices impact the public interest. Amazon committed the unfair and deceptive acts described herein in the course of its business as part of a pattern and generalized course of conduct. Amazon's unfair and deceptive business acts and practices have affected, and continue to affect, a great many consumers. The business of downloadable media available to the public is replete with public interest.

81. As a result of Amazon's unfair and deceptive acts and practices in the conduct of its business, Plaintiffs and the other members of the Classes have suffered injury to their business and/or property.

82. The State of Washington has an important interest in regulating the business activities of companies headquartered in Washington state, especially a prominent corporate citizen such as Amazon. The policies complained of herein, which are the basis of the statutory claim in this cause of action, were developed in, set in, and/or emanated or exported from Washington state.

83. Unless Amazon is enjoined from its unfair and deceptive acts and practices as alleged herein, Amazon will continue to cause injury to consumers.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Gawronski and Bruguier, on behalf of themselves and the Classes, pray for the following relief:

A. Certify this case as a class action on behalf of the Classes defined above; appoint Justin Gawronski and Antoine Bruguier as class representatives; and appoint their counsel as class counsel;

1 B. Declare that the actions of Amazon, as set out above, violate its own Terms of
2 Use, that Amazon lacks the right to remotely delete any digital content from Kindles and the
3 Kindle for iPhone application, and that Plaintiffs and members of the Classes have the right to
4 keep a permanent copy of their purchases and created digital content;

5 C. Declare that the actions of Amazon, as set out above, result in trespass to chattels,
6 conversion, breach of contract, and violate the CPA and CFAA;

7 D. Enter judgment against Amazon for all damages caused by its conduct and, to the
8 extent authorized under the CPA, treble damages;

9 E. Award restitution against Amazon for all money that Amazon has to which
10 Plaintiffs and the Classes are entitled in equity;

11 F. Award Plaintiffs and the Classes their reasonable litigation expenses and
12 attorneys' fees;

13 G. Award Plaintiffs and the Classes pre- and post-judgment interest, to the extent
14 allowable;

15 H. Enter injunctive and/or declaratory relief as is necessary to protect the interests of
16 Plaintiffs and the Classes; and

17 I. Award such other and further relief as equity and justice may require.

18 **JURY TRIAL**

19 84. Plaintiffs demand a trial by jury for all issues so triable.

20 Dated: July 30, 2009

21 Respectfully submitted,

22 LAW OFFICES OF CLIFFORD A. CANTOR, P.C.

23 By: s/ Clifford Cantor, WSBA # 17893

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